

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

BOBBIE BARKER, CLAIMANT,	:	APPEAL NO. C-110093
RALPH BARKER, DECEASED,	:	TRIAL NO. A-0907015
	:	
Plaintiff-Appellant,	:	<i>JUDGMENT ENTRY.</i>
	:	
vs.	:	
	:	
TENNISON & TENNISON,	:	
	:	
HOWARD YOHO, d.b.a. J.C. NEWLIN	:	
PAINTING CO.,	:	
	:	
and	:	
	:	
ADMINISTRATOR, OHIO BUREAU	:	
OF WORKERS' COMPENSATION,	:	
	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

Bobbie Barker appeals the trial court's judgment that denied her motion for relief from judgment. We affirm the judgment of the trial court.

Barker filed a claim for workers' compensation benefits arising from the death of her husband, Ralph Barker. When the claim was disallowed by the Ohio Industrial Commission, she appealed to the trial court. On November 24, 2009, the Ohio Bureau of Workers' Compensation ("the BWC") filed a motion to compel Barker to answer its interrogatories, or in the alternative, to dismiss the case. On January 6, 2010, the trial court granted the motion, noting that Barker had not opposed the

motion. On April 20, 2010, the trial court granted the BWC's motion for Barker to designate which witnesses would testify at trial. Again, the trial court noted that Barker had not opposed the motion.

On May 6, 2010, the BWC filed a motion to dismiss for failure to prosecute and for failure to comply with the trial court's April 20 order. Barker did not file a response. Instead, her attorney attempted to file a voluntary dismissal pursuant to Civ.R. 41(A). Because Barker's outstanding court costs had not been paid, the Hamilton County Clerk of Courts did not accept the voluntary dismissal. The trial court granted the BWC's motion, noted that Barker had not opposed the motion, and dismissed the case with prejudice. Barker filed a motion for reconsideration pursuant to Civ.R. 60(B), which was denied by the trial court. Barker now appeals.

In her first assignment of error, Barker asserts that the trial court erred when it dismissed her case without giving her notice as required by Civ.R. 41(B). But the BWC's motion to dismiss for failure to prosecute acted as implied notice under Civ.R. 41(B)(1). See *Genesis Outdoor Advertising, Inc. v. Troy Twp. Bd. of Zoning Appeals*, 11th Dist. No. 2001-G-2399, 2003-Ohio-3692, ¶20, citing *Svoboda v. Brunswick* (1983), 6 Ohio St.3d 348, 350, 453 N.E.2d 648; *Cook v. Transamerica Ins. Servs.* (1990), 70 Ohio App.3d 327, 331, 590 N.E.2d 1382. The first assignment of error is without merit.

Barker's second assignment of error is that the trial court erred by denying her motion for relief from judgment pursuant to Civ.R. 60(B). We conclude that the trial court did not abuse its discretion when it denied Barker's motion. See Civ.R. 60(B); *Harris v. Anderson*, 109 Ohio St.3d 1010, 2006-Ohio-1934, 846 N.E.2d 43, ¶17. The second assignment of error is without merit.

In her final assignment of error, Barker asserts that the trial court erred in denying her motion for relief from judgment without first holding an evidentiary hearing and making factual determinations. We conclude that the trial court's

failure to hold an evidentiary hearing did not amount to an abuse of discretion. See *Coulson v. Coulson* (1983), 5 Ohio St.3d 12, 16, 448 N.E.2d 809. The third assignment of error is without merit.

Therefore, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

DINKELACKER, P.J., HILDEBRANDT and SUNDERMANN, JJ.

To the Clerk:

Enter upon the Journal of the Court on October 14, 2011

per order of the Court _____.
Presiding Judge